

1 MR. GOLDSTEIN: This goes into the question, Your
2 Honor, that was raised yesterday where Mr. Howard cited Video
3 44 as the latest programming as most probative and I think
4 we're back in that question.

5 JUDGE SIPPEL: Well, current developments. Maybe
6 that's programming but, yeah, yes, programming would be the
7 significant current development, but I -- yes, I understand
8 what you're saying. Now -- but why is it that this
9 programming goes outside the period if that's the point --

10 MR. HOWARD: It's in the license term. It was
11 planned -- there's no, there's no regularly scheduled program
12 contained in this exhibit for WMAR. It was not planned during
13 the renewal period, thus it's within the scope of what he
14 permitted us to show with respect to programming during the
15 license term.

16 JUDGE SIPPEL: Does it, does it go past September
17 30th?

18 MR. HOWARD: The week that was -- no, no, no.

19 MS. SCHMELTZER: But it goes past September 3rd.

20 JUDGE SIPPEL: No, I understand that, but my ruling,
21 my ruling was that anything that was implemented prior to
22 September 3 but wasn't going to be -- well, I'm not -- but
23 that was -- that originated as a concept before September 3
24 but couldn't get carried out before September 3, I would
25 receive that evidence dating up to September 30th.

1 MS. SCHMELTZER: But there was a question as to just
2 when that news program was approved.

3 JUDGE SIPPEL: Well, their --

4 MS. SCHMELTZER: There are documents that show they
5 didn't order equipment until September 6th.

6 JUDGE SIPPEL: Well, this is, this is crist for
7 cross-examination. This is their proffer. Their proffer to
8 me is that here is our evidence with respect to the
9 comparative programming. It initiated during the relevant --
10 it was originated during the renewal period and it didn't get
11 on the air until sometime between the 3rd and the 30th.
12 That's basically what I'm hearing. I mean, this is what
13 they're representing to me. If you can come back and show
14 that that's something I shouldn't accept as believable --

15 MS. SCHMELTZER: But I --

16 JUDGE SIPPEL: -- then you can do that.

17 MS. SCHMELTZER: I have no way of cross-examining
18 anyone from the other stations in town as to what they were
19 running and I can't examine their program logs.

20 JUDGE SIPPEL: I -- the -- well, that's again --
21 it's a question of reliability and if -- I think as a matter
22 of law that I am able to give some reasonable credence to what
23 has been reported to have been broadcasting in the T.V. Guide,
24 in general. There may have been -- of course, there may
25 always be one or two things that turn out to be wrong if you

1 go back and double check all this programming, but I'm not
2 going to put them to that burden.

3 MS. SCHMELTZER: I believe the Bureau had an
4 objection, too.

5 JUDGE SIPPEL: Well, I'm going to wait and hear what
6 the Bureau has to say before I rule on it.

7 MR. GOLDSTEIN: My problem has to do more, Your
8 Honor, with the question of the particular week that was
9 selected, which you've, you've already encountered them, your
10 opinion or my opinion. Let me ask some questions. What is
11 the purpose of the pages numbers SH3-0210 and -- through
12 SH3-0214?

13 MR. HOWARD: First to identify them, they are
14 similar program grids for the -- a period in the renewal
15 period prior to September 3, 1991.

16 MR. GOLDSTEIN: So for my purposes if I wanted to
17 raise the question, it would be more probative data that was
18 presented during the bulk of the license term, I could rely on
19 this July 1991 to the same extent that His Honor is allowing
20 anyone to rely on the September 23rd to 29th programming? Is
21 that correct? In other words, this reflects the --

22 MR. HOWARD: Yes.

23 JUDGE SIPPEL: Okay. With that clarification, does
24 the Bureau have any objection? We're talking now about Tab C.

25 MR. GOLDSTEIN: The staff would like Mr. Howard to

1 restate the purpose for --

2 MR. HOWARD: It is -- as identified in her
3 testimony, it shows -- for one thing it demonstrates the
4 expansion that occurred of WMAL.

5 MR. GOLDSTEIN: Well, there's not a problem. We
6 know that there was an expansion. What other purpose is this
7 being proffered?

8 MR. HOWARD: That's --

9 MR. GOLDSTEIN: Your Honor, if it's only being
10 offered to show that there was an addition of one hour, the
11 Bureau has no objection. If that's the purpose for which it's
12 being proffered, the Bureau has no objection, if that's the
13 purpose for its expansion. I don't really want to play a
14 game, Your Honor. If you turn to Ms. Barr's testimony,
15 SH3-35, lines -- line 5, I think it's -- it is proffered for
16 another purpose, as well and I'd like to have that clarified.

17 JUDGE SIPPEL: Well, you should. I mean, that's the
18 -- you know, this is what you should be bringing to my
19 attention right now. What is the -- where is the
20 inconsistency?

21 MR. GOLDSTEIN: Well, I think it's -- I won't care
22 to -- I believe that Ms. Barr's testimony is that this exhibit
23 is for comparative purposes, to show that -- for comparative
24 purposes, to show that it -- as she says, "which was also more
25 than any other station in the market."

1 JUDGE SIPPEL: Is that what you're trying to show?

2 Well --

3 MR. HOWARD: I don't think the 20.5 --

4 JUDGE SIPPEL: -- that's what she says she's trying
5 to show.

6 MR. HOWARD: The 20.5 was not more than any other
7 station in the market. It's there for-- it's really there
8 just as a clarifying document to educate the --

9 MR. GOLDSTEIN: Well, look at footnote 4.

10 MS. SCHMELTZER: Your Honor, if I could just raise
11 another problem here with this exhibit.

12 MR. GOLDSTEIN: With all due respect, let's see if
13 we can get through with this one.

14 MS. SCHMELTZER: Okay.

15 MR. HOWARD: It isn't in Scripps Howard's favor is
16 what his point is.

17 MR. GOLDSTEIN: That was -- yeah. If you read line
18 4 of Ms. Barr's testimony on page 5, it says during --

19 MR. HOWARD: This time. That was the time -- that's
20 reflecting back to the time it started.

21 MR. GOLDSTEIN: September.

22 MR. HOWARD: That September time, yes.

23 MR. GOLDSTEIN: So the total exhibit is being
24 offered for comparative purposes, as well?

25 MR. HOWARD: We are not -- we don't intend to rely

1 on the earlier part where the -- there was a, a lesser amount
2 of news programming offered than the other stations, but it's
3 there for -- to insure that the record is clear with respect
4 to what was programmed by the station both during the renewal
5 period and after the renewal period.

6 JUDGE SIPPEL: Well, that certainly can -- I mean,
7 it can certainly impact the credibility of the witness and
8 this is -- but this is -- again, this is not the place to be
9 bringing all of this out. If there's inconsistencies in the
10 evidence and the tabs and what she testified to --

11 MS. SCHMELTZER: Can you withhold ruling on this
12 exhibit until -- until after she --

13 JUDGE SIPPEL: I am ho-- Well, I'm going to withhold
14 ruling on it, but I want to get it into the record as an
15 exhibit. I'm going to -- you know, he wants to strike things
16 or --

17 MR. HOWARD: I don't think he's saying there's an
18 inconsistency.

19 JUDGE SIPPEL: Well, I'm not going to make a ruling
20 on that yet. I don't have to. This person hasn't taken the
21 stand yet. But I think this is what's being raised. You have
22 the problem with an inconsistency.

23 MR. GOLDSTEIN: No. I have a problem with
24 clarification and I think that between Ms. Barr's testimony --
25 post-testimony and Mr. Howard, there's not an inconsistency

1 and I'm satisfied that I now have the explanation as to why
2 the respective pages are there, and it will be an appropriate
3 subject for cross-examination of Ms. Barr. I'm satisfied with
4 where we stand at the moment here.

5 JUDGE SIPPEL: All right. Then the Bureau has no
6 objection to Tab C with those limitations as we've talked,
7 subject to cross-examination. All right. Then I'm not going
8 to do anything with Tab C. It will be received, however. It
9 will be received as an exhibit at this admissions session
10 subject to all the rulings. Tab D?

11 MS. SCHMELTZER: I think we dealt with that
12 yesterday, Your Honor. Those are the resumes.

13 JUDGE SIPPEL: Right. Tab E?

14 MS. SCHMELTZER: I think we dealt with E-2. Our
15 complaint about this was that it's manufactured long after the
16 fact.

17 JUDGE SIPPEL: That is -- I mean, that -- Tab E is --
18 --in my estimation that is, that is part of the real guts of
19 the case and I will be very generous in terms of cross-
20 examination on that.

21 MS. SCHMELTZER: Fine. I don't have any objection
22 to Tab F.

23 JUDGE SIPPEL: All right. Those are program lists
24 also required to be retained under the rules.

25 MS. SCHMELTZER: Right.

1 JUDGE SIPPEL: Isn't that correct? That's the
2 program lists we're talking about? Is that right, Mr. Howard?

3 MR. HOWARD: Yes, Your Honor.

4 JUDGE SIPPEL: I mean the ones that FCC rules
5 require?

6 MR. HOWARD: That's correct.

7 JUDGE SIPPEL: All right. And G?

8 MS. SCHMELTZER: G is one page? Am I correct?

9 MR. HOWARD: Yes.

10 MS. SCHMELTZER: I don't have any objection to G. I
11 would comment, Your Honor, there were no meetings of this
12 Community Advisory Board during the renewal period, so I guess
13 the question is for what purpose Scripps Howard's offering
14 this.

15 JUDGE SIPPEL: Well, we've been through that. We
16 understand why. I mean, I understand what they're --
17 essentially what they're trying to accomplish with this
18 evidence. If the composite of the evidence doesn't achieve
19 that, then so be it. Now let's move to Volume --

20 MS. SCHMELTZER: 4.

21 JUDGE SIPPEL: -- Volume 3 or Volume --

22 MS. SCHMELTZER: Volume 4? Oh, 3.

23 JUDGE SIPPEL: Volume 3 of Exhibit 3, Attachments H
24 and I. Tab H? And I'm saying Tab. I'm also referring to
25 Attachment H.

1 MS. SCHMELTZER: No objection to Attachment H.

2 JUDGE SIPPEL: For the record, just maybe you could
3 just describe it for the transcript, Mr. Howard, just in
4 general terms. What is Tab H?

5 MR. HOWARD: Did you ask me, Your Honor.

6 JUDGE SIPPEL: Yes.

7 MR. HOWARD: It's a -- it's the transcript of the
8 editorials that were aired on the program during the --

9 JUDGE SIPPEL: Thank you.

10 MR. GOLDSTEIN: Your Honor, I don't know if you had
11 it. At some point in time Mr. Howard circulated a copy of, at
12 your request I think, the attachments, what each one was.

13 JUDGE SIPPEL: Yes, I have it right here.
14 Attachment I?

15 MS. SCHMELTZER: And I have no objection to
16 Attachment I and that is the list of PSAs.

17 MR. GOLDSTEIN: I would just ask one simple
18 clarification on that. For example, page 0407, the N stands
19 for national and the L stands for local? Is that correct?

20 MR. HOWARD: That is my understanding.

21 JUDGE SIPPEL: Before we pass off on that, let me
22 get the, let me get the benefit of that research. I've got
23 047 -- what was that reference?

24 MR. GOLDSTEIN: I just flipped the page down, Your
25 Honor. In the right-hand column it says N/L.

1 JUDGE SIPPEL: Yes.

2 MR. GOLDSTEIN: And I -- the N means it was part of
3 a nationally produced program so that the, the PSA was
4 incorporated as part of a national program. The L means it
5 was produced locally by --

6 MR. HOWARD: That's not precisely correct. She
7 explains that in her testimony that the -- well, they are
8 identified as national. It was like a national campaign or
9 nationally produced for a national organization, rather than
10 locally produced, but she made it explicit that the --
11 sometimes the network sent PSAs down as part of their fee and
12 that these are not counted in the -- in this -- they're not
13 included in the exhibit. This is strictly ones that were
14 selected for airing by WMAR.

15 JUDGE SIPPEL: They were selected for what purpose?

16 MR. HOWARD: For airing by --

17 JUDGE SIPPEL: For airing. To be broadcast?

18 MR. HOWARD: Yes, sir.

19 JUDGE SIPPEL: All right,

20 MS. SCHMELTZER: Okay.

21 JUDGE SIPPEL: Volume 4, Tabs J through R.

22 MS. SCHMELTZER: I have no objection to J.

23 JUDGE SIPPEL: I'm assuming that -- I'm going down
24 these as Ms. Schmeltzer -- I'm assuming that the Bureau has no
25 objection.

1 MR. GOLDSTEIN: Absolutely, Your Honor. When we
2 have a comment, we will make it.

3 MR. HOWARD: Your Honor, on J, may I?

4 JUDGE SIPPEL: We've got no objection, so --

5 MR. HOWARD: I just wanted to note for the record,
6 Your Honor, that in reviewing this exhibit we have -- there
7 were mistakes that we would -- in the proffer of the exhibit
8 would delete parts of the network programming, ten cases.

9 MR. GOLDSTEIN: May I suggest we do that now so --

10 JUDGE SIPPEL: Fine. Just direct us to a page and a
11 line.

12 MR. HOWARD: Okay. SH3-07/93.

13 MR. GOLDSTEIN: 07/93.

14 MR. HOWARD: The second entry, 9/20/91, Treasury
15 Secretary Brady urges policy, delete.

16 JUDGE SIPPEL: Now, was this exhibit prepared under
17 the supervision of Ms. Barr?

18 MR. HOWARD: Yes, sir.

19 JUDGE SIPPEL: All right. And you will be entitled
20 to some voir dire on this. This isn't gone forever.

21 MS. SCHMELTZER: Right.

22 JUDGE SIPPEL: Okay. I'm sorry. Mr. Howard, you
23 may continue.

24 MR. HOWARD: 0825, two deletions, at the second
25 entry, Amnesty international.

1 MS. SCHMELTZER: 0825?
2 MR. HOWARD: Yes.
3 MS. SCHMELTZER: Amnesty International 9/24?
4 MR. HOWARD: Yes.
5 MS. SCHMELTZER: And what else?
6 MR. HOWARD: And the last one, 9/30/91, Gang
7 Problems, not exclusively in fixed cities. 0846, Health
8 Insurance Fraud Has Become a Business of its Own, 6/23/91.
9 Page 0855, the sixth one down on 9/13, Real Life with Jane
10 Pauley. The issue is Teenagers and Steroids, delete. Two
11 down from that, 9/17/91, Bristol-Meyers Discontinues Heart
12 Drug. 0856, 9/24, Prescription Drug Prices Rise. I'm sorry,
13 the fourth one down, Prescription Drug Prices Rise. 0857, at
14 the top, 9/26/91, AIDS Victim, Kimberly Bergalis and, finally,
15 0887, next to the bottom, 9/17/91, Supreme Court Nominee
16 Thomas Finishes Confirmation Hearing Without --
17 MR. GOLDSTEIN: May I inquire which one of those --
18 MS. SCHMELTZER: I'm sorry. Which one was that?
19 MR. HOWARD: The last is 88 -- 0887, the second from
20 the bottom, 9/17/91, Supreme Court Nominee Thomas Finishes
21 Confirmation Hearing Without --
22 MR. GOLDSTEIN: Can I just ask what led to the
23 deletion of these?
24 MR. HOWARD: The recognition that the news programs
25 that contained these had been preempted on that --

1 MR. GOLDSTEIN: And then the appropriate would be to
2 ask Ms. Barr how -- what they did to ascertain how these were
3 -- what type of review was conducted to determine if these ten
4 were the only ones deleted?

5 MR. HOWARD: She would be the appropriate one.

6 JUDGE SIPPEL: All right. Is that it for Tab J --

7 MS. SCHMELTZER: Yes.

8 JUDGE SIPPEL: -- or Attachment J? Attachment K?
9 Attachment K is the schedule of the Baltimore Orioles baseball
10 games broadcast during 1991.

11 MS. SCHMELTZER: Right. I move to strike that, Your
12 Honor. Under the FOX case, sports programming was ruled to be
13 irrelevant.

14 JUDGE SIPPEL: Let me see. Is that --

15 MR. GOLDSTEIN: I would like to know what the
16 purpose of the proffer is because I think her testimony dealt
17 with the Orioles in a context other than sports. That might
18 be good for Mr. Roberts -- Mr. Howard.

19 MR. HOWARD: The amount of Orioles programming which
20 is relevant to the programming, it addresses issues --
21 community needs, Your Honor, and the amount of it that was
22 offered which is proffered for that purpose. With respect to
23 the KTTV objection, yes, the Review Board did, did strike the
24 offering of Dodgers programming, but they did not take into
25 account the recent decision of the Congress in the Cable

1 Deregulation Act where they directed the Commission to
2 undertake a study of the migration of professional sports and
3 college sports from free over-the-air television to cable.
4 And, in fact, in the House Committee Report they indicated
5 that the loss of the professional sports programming from free
6 T.V. was a matter of great concern to that committee. Then
7 the Commission, in undertaking that study, also indicated that
8 the loss of over-the-air television was a substantial concern
9 to the Commission, as well. In light of those statements --
10 the Commission's statement coming after the Review Board's
11 decision, plus the EnBonc (Phonetic), 1960 EnBonc inquiry
12 ruling that any of the categories of programming identified --
13 identifying specific programs, which one was sports, and then
14 the T.V. deregulation decision identifying that there -- the
15 interpretation of what is responsive programming was to be
16 very broad and would -- could include any of the program
17 categories identified in the -- in that 1960 EnBonc statement.
18 We think that it's of some weight in showing that this station
19 by offering its -- the programming of the Orioles to the
20 community over free over-the-air television was a service to
21 the community and should be entitled to some credit.

22 MR. GOLDSTEIN: Do you know if any of that dealt
23 with the concept of renewal expectancy, though, Your Honor?

24 MS. SCHMELTZER: It did not and this is all general
25 policy issues and nothing has been defined by the Commission

1 to be connected with renewal expectancy.

2 MR. HOWARD: Well, the Commission indicated it's
3 going to determine renewal expectancy grounds on a case by
4 case basis after --

5 MR. GOLDSTEIN: And we will hopefully get an L.A.
6 decision soon.

7 MR. HOWARD: But even, even so, it would be -- I
8 think that issue be admitted and perhaps the weight should be
9 reduced in light of the -- any decision, but it's -- it is
10 certainly -- we've got Congress sedating that this programming
11 is important. I don't think the Review Board's determination
12 of this should be --

13 JUDGE SIPPEL: Well, I'm going to, I'm going to do
14 it this way. Is there -- does the Bureau have an objection to
15 this?

16 MR. GOLDSTEIN: I would support Ms. Schmeltzer, so
17 let them put it forth as an offer of proof and if the
18 Commission changes, then appeal the -- then we'll -- we can
19 deal with it. But I would object, I would support Ms.
20 Schmeltzer on this.

21 JUDGE SIPPEL: Well, I'm going to, I'm going to
22 overrule the objection and receive it in light of two things.
23 First, there is -- Ms. Schmeltzer, you're correct. There is
24 in the record other testimony relevant to the Orioles in terms
25 of some local broadcasting of some locally sponsored projects

1 that are community directed. And, number two, for the points
2 that Mr. Howard raises, which I'm certainly not prepared to
3 address the fact or -- but there's enough of a -- there's
4 enough of an uncertainty raised with respect to how this --
5 how the law may be on this by the time we come down to
6 proposed findings time that I'm prepared to receive it. Its
7 weight is something else that is yet to be determined and I'll
8 leave it up to the Review Board to throw it out as irrelevant.
9 All right. That's Tab K or Attachment K. Attachment L?

10 MS. SCHMELTZER: We have no objection to Attachment
11 L.

12 JUDGE SIPPEL: Attachment M?

13 MS. SCHMELTZER: Okay. You struck the tape, so the
14 page that's included s SH3-0910 should be stricken.

15 JUDGE SIPPEL: All right. We'll strike 0910 for the
16 reasons you state.

17 MS. SCHMELTZER: Attachment N is a transcript of the
18 tape. The tape was stricken. All of the material that's in
19 Attachment N is elsewhere in Ms. Barr's testimony, so this
20 ought to be stricken as well.

21 JUDGE SIPPEL: You mean it's -- it is quoted
22 verbatim in her testimony in other places?

23 MS. SCHMELTZER: She goes through all of these
24 things that are discussed. I can't say it's verbatim, but
25 it's -- there are -- she goes through everything that's

1 included in this transcript elsewhere.

2 MR. HOWARD: That's not quite the case, Your Honor.
3 For example, on the equipment description on page 0918. That
4 is not --

5 JUDGE SIPPEL: I'm sorry. What is the page number?

6 MR. HOWARD: On 0918, the last page of this
7 attachment.

8 MR. GOLDSTEIN: Are you saying that's not referred
9 any place else, Mr. --

10 MR. HOWARD: Not in this, not in this form.

11 MS. SCHMELTZER: Well, getting to 0918, Your Honor,
12 it shows that none of the equipment approvals were until mid-
13 September of 1991 which is beyond the renewal period.

14 MR. HOWARD: That issue is addressed in Terry
15 Schroeder's testimony where he talks about that it was a
16 formal approval at that point.

17 JUDGE SIPPEL: Well, that's obviously going to
18 impact. You've got a lot to work with there on weight, but
19 it's going to come in. I mean, that page 0918 is going to
20 come in.

21 MS. SCHMELTZER: Okay. Why don't --

22 JUDGE SIPPEL: If it pulls together -- well, this is
23 a composite of what they're -- I mean, this is, this is
24 exactly what I'm looking for. As I understand it, this is a
25 composite of the new equipment that you're contending that you

1 implemented which, which FOX TV in some cases say it's a good
2 thing to do, so this is -- I can see it all in one place.
3 Weight is something else.

4 MS. SCHMELTZER: Okay. Apart from that page then I
5 think the rest of the exhibit should be stricken since the
6 tape was stricken.

7 JUDGE SIPPEL: The tape was stricken and is this --
8 the tape was stricken for a different reason. Is this
9 duplicative of what's in her testimony?

10 MS. SCHMELTZER: For the most part this is
11 duplicative, yes.

12 JUDGE SIPPEL: All right. Let me ask Mr. Howard
13 about that.

14 MR. HOWARD: I'm sorry, Your Honor. I'm not
15 prepared to, to concede that it is duplicative of the -- it's
16 certainly restated in a different way and it's -- it is not
17 simply a duplication of testimony.

18 JUDGE SIPPEL: This is testimony. This -- I mean, I
19 know this is a fact, but let me just be sure and clarify it
20 again. This is broadcasting that's frozen in time. This has
21 actually been what was broadcast over the air. Is that
22 correct, what's in this exhibit?

23 MS. SCHMELTZER: No.

24 MR. HOWARD: The tape? No. The tape is a narration
25 of that programming, Your Honor. It was not -- this is not

1 the --

2 JUDGE SIPPEL: It's a description --

3 MR. HOWARD: It's a description of the program.

4 JUDGE SIPPEL: It's a description of the program.

5 So what I have here in Exhibit N is a description of this
6 programming?

7 MS. SCHMELTZER: You don't even have that.

8 MR. HOWARD: As it reads through the tape. As --
9 it's a transcript of the -- of what -- had you viewed the
10 tape, you would have heard which is narration identifying the
11 programming that was shown on the tape.

12 JUDGE SIPPEL: All right.

13 MS. SCHMELTZER: She's identified the programming
14 elsewhere in her exhibit and she's identified elsewhere in her
15 exhibit -- she discusses in her exhibit the program Front
16 Page. She discusses in her exhibit To The Point. She
17 discusses it, for instance, on page 0914. It says, "Between
18 May 30 through September 30 WMAR aired 35 regular season
19 Orioles baseball games. We have just seen evidence of that in
20 another exhibit.

21 JUDGE SIPPEL: All right. I hear you. What does
22 the Bureau -- what's the Bureau --

23 MR. GOLDSTEIN: I haven't done a comparison, Your
24 Honor, so I can't -- I mean, if it's, if it's repetitious, it
25 shouldn't be in there.

1 JUDGE SIPPEL: We'll take -- I can take an
2 assumption that much of it is repetitious. I think that's a
3 fair assessment. All right. I'm going to, I'm going to draft
4 a motion to strike pages 0911 through 0916.

5 MS. SCHMELTZER: Through 0917?

6 JUDGE SIPPEL: Yes. Yes, through 0917. Those are
7 stricken, but 0918 stays in.

8 MR. HOWARD: I'm sorry, Your Honor. At the bottom
9 page 0917 is some descriptive text that goes with 0918 that I
10 would ask stay in, the second paragraph on 0917.

11 JUDGE SIPPEL: I see what you're saying. I'm
12 looking at it. All right. I will amend my ruling then to --
13 I will retain the last paragraph on 0917.

14 MS. SCHMELTZER: And along those lines, on 0918 I
15 think we should strike the language that says, "The preceding
16 clips."

17 JUDGE SIPPEL: Yeah. This -- well, I would leave
18 that again for cross-examination. I mean, if -- I try and
19 rethink these questions through if the witness were actually
20 on the stand, which is what is supposed to happen, and
21 certainly that question could be -- would logically be asked
22 of her to say, you know, from what source was this list
23 prepared.

24 MS. SCHMELTZER: I'm sorry. That language refers to
25 the programming clips, not the equipment.

1 JUDGE SIPPEL: I see.

2 MS. SCHMELTZER: And there are no clips now in the
3 record.

4 JUDGE SIPPEL: Okay. I'm -- you -- I stand
5 corrected. There's no reason for that statement to be in
6 there. We will strike on page 0918 the sentence at the bottom
7 of that short which starts, "The preceding clips," and ends
8 with, "the license term." That language is stricken as
9 irrelevant. Thank you, Ms. Schmeltzer.

10 MR. GOLDSTEIN: You've already ruled on Exhibit O,
11 Your Honor.

12 MS. SCHMELTZER: No.

13 MR. GOLDSTEIN: This says, "Received separate from
14 Motion to Strike at 149."

15 MS. SCHMELTZER: Oh.

16 JUDGE SIPPEL: All right. Then let's move on to the
17 next one, Attachment P, P as in Pennsylvania.

18 MS. SCHMELTZER: Your Honor, there's a lot of this
19 exhibit that's unnecessary. I don't know how we're going to
20 make findings on this.

21 JUDGE SIPPEL: Well, let me state for the record
22 what it purports to be based on the listing that counsel
23 provided, promotional materials for some WMAR-TV community
24 service activities, and I'll ask Mr. Howard to respond to
25 your, your concern about the uncertainty of this exhibit.

1 MR. HOWARD: Well, these are the hard copy documents
2 that are associated with promoting these events as described
3 in the testimony as having occurred at least in part during
4 the renewal period, efforts undertaken by Scripps Howard and
5 WMAR during the renewal period.

6 JUDGE SIPPEL: These are really --

7 MS. SCHMELTZER: Well, I'm not sure what -- like,
8 for instance, 0954 which is headed Rita Rudner and describes
9 Rita Rudner. I really don't know what that adds to the
10 record.

11 MR. GOLDSTEIN: It seems to me it's part of a
12 program, starting on page 0952 of Life Songs (Phonetic) which
13 is described in her testimony, the rest of the program and
14 it's incorporating the whole program. I guess you can't --
15 incorporating the program. People say, what is the rest of
16 the program --

17 MS. SCHMELTZER: But then we also have other
18 sponsors at the end.

19 JUDGE SIPPEL: Like where for example?

20 MS. SCHMELTZER: On page 0972.

21 MR. HOWARD: This is all still part of the --

22 MS. SCHMELTZER: There isn't -- there are
23 descriptions of these things elsewhere. I'm not quite sure
24 why we need all this material in the record.

25 JUDGE SIPPEL: Well, these are -- all of this

1 programming does come up in the testimony. Isn't that
2 correct?

3 MR. HOWARD: I'm sorry, Your Honor.

4 JUDGE SIPPEL: I say all of this programming in this
5 Tab P does come up in her testimony?

6 MR. HOWARD: These are the source documents for some
7 of that material. Some of it was community service rather
8 than -- well, some of the programs, for example, Life Songs
9 was not aired but they were PSAs.

10 JUDGE SIPPEL: I'll correct that. These are
11 community service activities, activities.

12 MR. GOLDSTEIN: Your Honor, if we turn our attention
13 to page 0952, I think we'll get an explanation as to why it's
14 in here, and read on the left-hand side of the page paragraph
15 4.

16 JUDGE SIPPEL: Well, let's see. This is -- but this
17 -- I can remember seeing her test-- seeing testimony about
18 Life Songs and Hero (Phonetic). So it really -- I would
19 consider this almost as if -- as a kind of a demonstrative
20 kind of evidence.

21 MR. HOWARD: Well, actually, Your Honor, to some
22 degree it's source document that underlies the, the evidence,
23 as well. It was used by Ms. Barr in preparing her testimony.
24 These are records that were kept in the ordinary course of
25 business that relate to community service.

1 JUDGE SIPPEL: I don't quarrel with the, with the
2 authenticity of the documents and that they were coming from
3 the record, but I am concerned about this is quite a bit of
4 information and do we need it all if she's already testified
5 to all of this community activity? I'd hate to want to have
6 to familiarize myself with all of this unless it was, you
7 know, really essential on a credibility issue.

8 MR. HOWARD: It certainly is not going to -- if
9 there are selected excerpts, they will be limited, Your Honor,
10 and it just may be to -- that it adds substance. We submit it
11 because it adds substance to the testimony, but --

12 JUDGE SIPPEL: It like corroborates what you say?

13 MR. HOWARD: Yes, Your Honor.

14 JUDGE SIPPEL: Corroborative. Well, that kind of
15 makes it duplicitous, but I -- with your assurance that there
16 would, there would only be very selective reference to it, if
17 at all, in the findings, I'll exercise discretion and allow it
18 in. I don't see where it's prejudicial. All right. That's
19 Tab P.

20 MR. GOLDSTEIN: I have a question on --

21 JUDGE SIPPEL: Ms. Schmeltzer, understand that this
22 is being received over your objection.

23 MS. SCHMELTZER: Right.

24 JUDGE SIPPEL: I'm sorry. I didn't mean to
25 interrupt you, Mr. Goldstein. Go ahead, sir.

1 MR. GOLDSTEIN: On Attachment C, if I remember
2 correctly, during the course of deposition the Bureau raised
3 some question as to what -- to specifically identify which one
4 of these station sponsored projects fell within the time
5 period, and is that -- is the list on page 0985 one of those
6 which --

7 MR. HOWARD: No. This is -- well, this -- her
8 testimony clarifies what events occurred. This is again a
9 supporting document. This was a document that was kept in the
10 ordinary course of business -- in lies the -- range Life
11 project.

12 JUDGE SIPPEL: All right. But it doesn't tie into
13 dates. You know, the document itself does not tie into dates.

14 MR. HOWARD: The testimony --

15 JUDGE SIPPEL: But the testimony does?

16 MR. HOWARD: -- does do that, Your Honor. It's only
17 with respect to the -- it would be used only to support the
18 amounts raised where the testimony -- that as a matter that
19 was addressed here -- that was presented during the renewal
20 period. Again there was some overlap where the station worked
21 on that project during the renewal period.

22 JUDGE SIPPEL: Well, I'm going to -- are you saying
23 that in the testimony that each of these projects is somehow
24 or other identified with respect to the -- vis-a-vis the
25 relevant period, the renewal period?